

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GRANVILLE BOST,

v.

Plaintiff,

9:12-CV-1548

**RAY ACEVEDO, ELLEN KIRKPATRICK,
BARRY E. GOLDMAN, and CRYSTAL
GOODMAN,**

Defendants.

DECISION & ORDER

Thomas J. McAvoy, Senior District Judge.

This *pro se* action, brought pursuant to 42 U.S.C. § 1983, alleges violations of Plaintiff's constitutional rights because of his medical treatment while a prisoner in New York State custody. The Court provided an initial review of the Complaint, finding that the Complaint should be dismissed but the Plaintiff given an opportunity to re-plead the action and state a claim upon which relief could be granted. See dkt. # 7. After the Plaintiff filed an Amended Complaint, the Court again reviewed the action and ordered the Amended Complaint be served on Defendants Warden Ray Acevedo, Nursing Supervisor Ellen Kirkpatrick, Barry E. Goldman, and Crystal Goodman. See dkt. # 12.

After being served with the Complaint, Defendant Ray Acevedo filed an answer and a cross-claim against Defendants Ellen Kirkpatrick, Crystal Goodman, and Barry Goldman. See dkt. # 18. Defendants Kirkpatrick, Goodman and Goldman filed answers to the Amendment Complaint. See dkt. ##s 20-22. They also filed answers to Acevedo's

crossclaims and cross-claims against Acevedo. See dkt. ##s 29-31.¹

The matter was eventually referred to the Hon. Therése Wiley Dancks, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated January 30, 2015, Magistrate Judge Dancks recommends that the motion for summary judgment of Defendants Ellen Kirkpatrick, Barry Goldman and Crystal Goodman be granted. See dkt. # 59. The Magistrate Judge further recommends that Defendant Ray Acevedo's motion for summary judgment be granted. Finally, the Magistrate Judge recommends that judgment be granted in Defendants' favor on Plaintiff's complaint, that judgment be entered in favor of Cross-Defendants on Defendant Acevedo's cross-claim, and that judgment be entered in favor of Cross-Defendant on the cross-claims of Defendants Goldman, Goodman and Kilpatrick.

Plaintiff filed timely objections to the Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1). When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which the objection is made." See 28 U.S.C. §636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the

¹These pleadings named as cross-defendants parties who had been dismissed from the case with prejudice. For the sake of simplicity, the Court names only those parties who remain in the case in this Order. The Court notes, however, that the effect of this Order is to dismiss all claims and counterclaims against all parties.

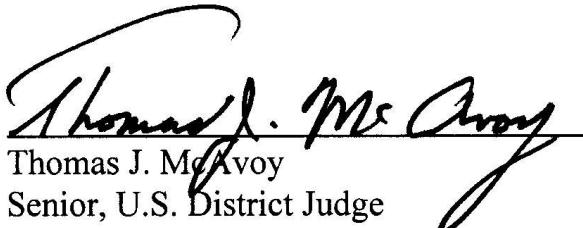
Defendants' objections, this Court has determined to accept the recommendation of Magistrate Judge Dancks for the reasons stated in the Report-Recommendation.

It is therefore ordered that:

- (1) Plaintiff's objections, dkt. # 60, to the Report-Recommendation of Magistrate Judge Dancks, dkt. # 59, are hereby OVERRULED;
- (2) The Report-Recommendation is hereby ADOPTED;
- (3) The Motion for Summary Judgment of Defendants Kirkpatrick, Goodman, and Goldman, dkt. # 48, is GRANTED;
- (4) The Motion for Summary Judgment of Defendant Acevedo, dkt. # 52, is hereby GRANTED;
- (5) The Clerk of Court is directed to enter judgment in Defendants' favor on Plaintiff's Complaint;
- (6) The Clerk of Court is directed to enter judgment in favor of Cross-Defendants on Defendant Acevedo's cross-claim, dkt. # 18; and
- (7) The Clerk of Court is directed to enter judgment in favor of Cross-Defendant on the cross-claims of Defendants Goldman, Goodman and Kilpatrick, dkt. ##s 29-31.

IT IS SO ORDERED.

Dated: March 16 , 2015



Thomas J. McAvoy
Senior, U.S. District Judge